

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LESSLEY CONSTRUCTION COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 77-38

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Section 8.02 of Regulation I came on for hearing before the Pollution Control Hearings Board (Chris Smith and Dave J. Mooney, members), convened at Seattle, Washington on June 6, 1977. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing.

Appellant Lessley Construction Company appeared by its representative Winston Lessley. Respondent appeared by and through its attorney, Keith D McGoffin. Court reporter Sherri Darkow reported the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined.  
2 From testimony heard and exhibits examined, the Pollution Control  
3 Hearings Board makes these

#### 4 FINDINGS OF FACT

##### 5 I

6 Pursuant to RCW 43 21B.260, respondent has filed a certified  
7 copy of its Regulation I and amendments thereto, which we notice.

##### 8 II

9 On February 7, 1977 an employee of the appellant ignited an  
10 outdoor fire at a building site near Bothell, Washington. The fire was  
11 ignited to dispose of leftover construction materials. The appellant  
12 owned the land upon which the fire was ignited.

##### 13 III

14 The fire was some three feet in diameter and emitted a black smoke  
15 plume forty feet in height. The fire contained among other things  
16 cardboard and styrofoam packing materials.

##### 17 IV

18 The fire attracted the attention of one of respondent's inspectors  
19 who was then on patrol. The inspector observed the dimensions and  
20 contents of the fire were as described above and issued a notice of  
21 violation to an employee of appellant on February 7, 1977. A notice  
22 and order of civil penalty was subsequently issued to appellant.

##### 23 V

24 As a matter which is only relevant to the amount of penalty in  
25 this appeal we find that the appellant has previously violated  
26 respondent's outdoor fire regulations. The appellant was assessed two

27 FINAL  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 \$50 penalties for separate outdoor fires occurring on April 29, 1976.  
2 Appellant discharged these obligations through a settlement agreement with  
3 the respondent.

#### 4 VI

5 Also relevant to the amount of penalty in this appeal we find that  
6 following the violations of April 29, 1976 the appellant directed that  
7 its employees light no more outdoor fires. Furthermore, the appellant  
8 bought a truck for the express purpose of removing construction debris  
9 to a proper disposal site. The employee who ignited the fire in this  
10 appeal did so knowing that he was acting contrary to his employer's orders  
11 did so without the knowledge of Mr. Winston Lessley and is now no longer  
12 employed by the appellant.

#### 3 VII

14 Any Conclusion of Law hereinafter stated which is deemed to be  
15 a Finding of Fact is adopted herewith as such.

16 From these Findings, the Pollution Control Hearings Board comes  
17 to these

#### 18 CONCLUSIONS OF LAW

##### 19 I

20 Pursuant to the Washington Clean Air Act, chapter 70.94 RCW the  
21 respondent has adopted its Regulation I, Article 8, Section 8.02(3) which  
22 provides.

23 It shall be unlawful for any person to cause or allow  
24 any outdoor fire.

25 (3) containing garbage, dead animals, asphalt,  
26 petroleum products, paints, rubber products,  
27 plastics or any substance other than natural  
vegetation which normally emits dense smoke or  
obnoxious odors, . . .

FINAL

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 The burning of a quantity of styrofoam which emitted dense smoke has  
2 violated respondent's Regulation I, Article 8, Section 8.02(3).

3 II

4 The appellant has caused the above violation because the  
5 fire was ignited by the appellant's employee. Because the employee was  
6 acting contrary to the appellant's orders and because the appellant  
7 has taken steps to dispose of its construction debris by means other  
8 than outdoor burning part of the assessed penalty shall be suspended.

9 III

10 Any Finding of Fact herein which is deemed to be a Conclusion  
11 of Law is adopted herewith as such.

12 From these Conclusions the Pollution Control Hearings Board  
13 makes this

14 ORDER

15 The \$250 civil penalty is affirmed, provided however, that  
16 \$50 of the civil penalty is suspended conditioned that appellant not  
17 violate respondent's regulations for a period of six months after this  
18 Order becomes final

19 DATED this 21<sup>st</sup> day of June, 1977.

20 POLLUTION CONTROL HEARINGS BOARD

21 Chris Smith  
22 CHRIS SMITH, Member

23 Dave J. Mooney  
24 DAVE J. MOONEY, Member

25  
26 FINAL

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER